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*Attorneys for Defendant(s) Isaac Hershko*

*Dawn Hershko a/k/a Dawn Ziccardi and 22 S. Broadway LLC*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FERNANDO ARELLANO, JOSE LUIS HERNANDEZ,  
MELISSA BACH, and DAVID ANDERSON,

Case No. 14 CIV. 8141 (VB)

Plaintiff,

-against-

**VERIFIED ANSWER**

ISAAC HERSHKO, HARVEY WEISMAN, DAWN  
HERSHKO s/k/a DAWN ZICCARDI, BO WEISMAN,  
YIFEI CHANG, THE 22 S. LLC d/b/a THE PLAY HOUSE  
MARKET, and 22 S. BROADWAY LLC,

Defendants.

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Defendants ISSAC HERSHKO, DAWN HERSHKO a/k/a DAWN ZICCARDI, and 22 S.  
BROADWAY LLC by and through their attorneys, THE LAW OFFICES OF JASON J.  
REBHUN, P.C. as and for their Verified Answer hereby states:

1. Denies each and every allegation set forth in paragraph(s) 1,2, 11, 19, 20, 21, 30, 31, 32, 52, 53, 54, 55, 56, 57, 61, 64, 65, 66, 68, 70, 71, 74, 81, 82, 83, and 84 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph(s) 3, 4, 5, 6, 22, 23, 24, 25, 27, 28, 29, 33, 34, 35, 36, 37, 38, 39, 40, 41, 58, 59, 60, 76, 77, and 78, of the Complaint.

3. Denies in the form alleged all allegations contained in paragraph(s) 7, 8, 9, 12, 15, 16, 46, 47, 48, 49, 51, 62, 63, 67, 69, 73, and 75 of the Complaint , and refers all questions of law to the court.
4. Admits each and every allegation set forth in paragraph(s) 10, 13, 14, 17, 18, 26, 50, 72, 79, and 80 of the Complaint.
5. Denies the allegations set forth in paragraph(s) 42, 43, 44, and 45 of the complaint and refers all questions of law to the court.

#### **ANSWERING THE FRIST CAUSE OF ACTION**

6. In response to paragraph 85, these answering Defendants repeats and realleges in response to paragraph(s) 1 through 84 of the Complaint, as ifs fully set forth herein.
7. Denies in the form alleged all allegations contained in paragraph(s) 86, 87, 88, and 89 of the Complaint, and refers all questions of law to the court.
8. Denies each and every allegation set forth in paragraph(s) 90 and 91 of the Complaint.

#### **ANSWERING THE SECOND CAUSE OF ACTION**

9. In response to paragraph 92, this answering Defendants repeats and realleges in response to paragraph(s) 1 through 91 of the Complaint, as ifs fully set forth herein.
10. Denies in the form alleged all allegations contained in paragraph(s) 93, 94, 95, and 96 of the Complaint, and refers all questions of law to Court.

#### **ANSWERING THE THIRD CAUSE OF ACTION**

11. In response to paragraph 97, this answering Defendants repeats and realleges in

response to paragraph 1 through 96 of the Complaint, as if fully set forth herein.

12. Denies in the form alleged all allegations contained in paragraph(s) 98, 99, and 100 of the Complaint, and refers all questions of law to the Court.

13. Denies each and every allegation set forth in paragraph(s) 101 and 102 of the Complaint.

#### **ANSWERING THE FOURTH CAUSE OF ACTION**

14. In response to paragraph 103, this answering Defendants repeats and realleges in response to paragraph 1 through 102 of the Complaint, as if fully set forth herein.

15. Denies in the form alleged all allegations contained in paragraph(s) 104, 105, and 106 of the Complaint, and refers all questions to the Court.

16. Denies each and every allegation set forth in paragraph(s) 107 of the Complaint.

#### **ANSWERING THE FIFTH CAUSE OF ACTION**

17. In response to paragraph 108, this answering Defendants repeats and realleges in response to paragraph 1 through 107 of the Complaint, as if fully set forth herein.

18. Denies each and every allegation set forth in paragraph(s) 109, 110, 111, 112, and 113 of the Complaint.

#### **ANSWERING THE SIXTH CAUSE OF ACTION**

19. In response to paragraph 114, this answering Defendants repeats and realleges in response to paragraph 1 through 113 of the Complaint, as if fully set forth herein.

20. Denies each and every allegation set forth in paragraph(s) 115, 116, 117, 118, and 120 of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph(s) 119 of the Complaint.

**ANSWERING THE SEVENTH CAUSE OF ACTION**

22. In response to paragraph 121, this answering Defendants repeats and realleges in response to paragraph 1 through 120 of the Complain, as if fully set forth herein

23. Denies in the form alleged all allegations contained in paragraph(s) 122, and 123 of the Complaint, and refers all questions of law to the court.

24. Denies each and every allegation set forth in paragraph(s) 124 of the Complaint

**ANSWERING THE EIGHTH CAUSE OF ACTION**

25. In response to paragraph 125, this answering Defendants repeats and realleges in response to paragraph 1 through 124 of the Complain, as if fully set forth herein

26. Denies in the form alleged all allegations contained in paragraph(s) 126, and 127 of the Complaint, and refers all questions of law to the court.

**ANSWERING THE NINTH CAUSE OF ACTION**

27. In response to paragraph 128, this answering Defendants repeats and realleges in response to paragraph 1 through 127 of the Complain, as if fully set forth herein

28. Denies in the form alleged all allegations contained in paragraph(s) 129 of the Complaint, and refers all questions of law to the court.

29. Denies each and every allegation set forth in paragraph(s) 130 of the Complaint.

**DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:** The allegations set forth in plaintiffs' cause(s) of action fail to state a basis for which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:** Plaintiffs have failed to mitigate damages and defendants will seek a reduction of any damages by the amount of damages plaintiffs could have mitigated.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:** If the damages were sustained by the plaintiffs at the time and place and in the manner alleged in the complaint, such damages and injuries are attributable, in whole or in part, to intervening, superceding causes to which the defendants had no control.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:** The defendants herein claim the benefit of each and every provision of General Obligations Law Section 15-108.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:** The cause(s) of action set forth in the Complaint are barred by the applicable statute of limitations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:** The damages/injuries alleged by the plaintiff(s) was/were caused in whole or in part by the culpable conduct of the plaintiff(s).

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:** Plaintiffs have failed to satisfy all conditions precedent to bringing this action.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:** Plaintiffs lack standing to bring this action.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:** Plaintiffs have unclean hands with respect to this action.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:** Some of the Plaintiffs were investors in the subject store and their claims therefore are beyond the scope of the relevant wage statutes upon which the Plaintiffs rely.

**AS A BASIS FOR AFFIRMATIVE RELIEF AND AS A CROSS-CLAIM AGAINST CO-PLAINTIFF(S), THE ANSWERING DEFENDANTS ALLEGES UPON INFORMATION AND BELIEF**

That if Plaintiffs were caused to sustain damages at the time and place set forth in the complaint through any culpability other than Plaintiff(s) own, said damages arose in whole or in part from the culpability of Co-Defendant(s) , and if any judgment is recovered herein by Plaintiffs against the answering defendants, they will be damaged thereby and the answering Defendants will be entitled to proportionate indemnity on the basis of proportionate responsibility in culpability from the Co-Defendants named above.

In the event the answering Defendants are held vicariously liable to Plaintiffs as a result of primary and active culpability on the part of the Co-Defendants, these answering Defendants will be damaged thereby and shall be entitled to common law indemnification plus costs and disbursements.

All references to "Plaintiffs" throughout this Complaint/Answer are intended to refer individually to each Plaintiff named in the caption unless otherwise specified.

All references to "Defendants" throughout this Complaint/Answer are intended to refer individually to ISAAC HERSHKO, DAWN HERSHKO a/k/a DAWN ZICCARDI and 22 S. BROADWAY LLC named in the caption unless otherwise specified.

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**WHEREFORE**, Defendants demands judgment dismissing the Complaint of the Plaintiffs, together with judgment on its cross-claims against the relevant parties, as well as costs and disbursements of this action.

Dated: New York, New York  
November 3, 2014

Yours truly,

*Jason J. Rebhun*  
THE LAW OFFICES OF JASON J. REBHUN, P.C.  
*Attorneys for Defendants Isaac Hershko ,Dawn Hershko*  
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To:

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